

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In re</b>	)	
	)	
<b>CELLULAR SOUTH LICENSES, INC.</b>	)	
	)	<b>CC Docket No. 96-45</b>
<b>Petition for Waiver of</b>	)	
<b>Sections 54.802 of the</b>	)	
<b>Commission's Rules</b>	)	

**PETITION FOR WAIVER - EXPEDITED ACTION REQUESTED**

Cellular South Licenses, Inc. ("Cellular South"), by counsel and pursuant to Section 1.925(b) of the Commission's Rules, 47 C.F.R. §1.925, hereby requests a waiver of Sections 54.802(a) of the Commission's rules, 47 C.F.R. §54.802(a)<sup>1</sup> Cellular South requests that the Commission waive these rules to accept Cellular South's line count submissions for interstate access support, which, due to an administrative oversight were received by the Commission after the deadline, so that vital interstate access support continues to rural Mississippi without interruption. In support of this Petition, the following is respectfully shown:

**I. BACKGROUND**

In December 2001, Cellular South obtained Eligible Telecommunications Carrier (AETC@) status in the state of Mississippi to provide universal service to subscribers in areas served by a non-rural local exchange carrier.<sup>2</sup> Cellular South is entitled to receive interstate access and high cost model support in Mississippi in its designated ETC service area. Because Cellular South is a small cellular carrier serving only sparsely populated areas in Mississippi and

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<sup>1</sup> No fee is required to be submitted with this request.

<sup>2</sup> *Order Designating Cellular South Licenses, Inc. as an Eligible Telecommunications Carrier*, Docket No. 01-UA-0451, Mississippi Public Service Commission, December 18, 2001.

Alabama, both forms of support are critically important to Cellular South's operations. Such support assists Cellular South in providing a quality universal service offering to the underserved rural communities. It would be extreme and inequitable to penalize Cellular South by cutting off interstate access support for an entire calendar year for missing the line count filing deadline by a few days.

The FCC Rule Section involved in this request for waiver is as follows:

- Section 54.802(a): In order for an ETC to be eligible for interstate access support, interstate access line count filings must be submitted no later than the last business day of March, June, September, and December of each year. 47 C.F.R. §54.802(a).

Cellular South's interstate access line count data, required by 54.802(a), were received by the Commission on January 14, 2004, 14 days after the applicable deadline. Cellular South prepared and intended mail its interstate access line count data to USAC on December 23, 2003, eight days prior to the deadline, along with a large number of line count filings made by Cellular South's counsel. Through an administrative error, Cellular South's interstate access line count filing was not sent along with the host of other filings made on that day. Cellular South intended to file its Mississippi interstate access line count filing on a timely basis, as evidenced by the fact that Cellular South did send via overnight mail on December 22<sup>nd</sup> and 23<sup>rd</sup> all of Cellular South's line count filings for Alabama and Mississippi. Cellular South's counsel believed that the interstate access line count filing for Mississippi had been filed with the others, until alerted by USAC staff on January 14, 2004 that it had not been received. Cellular South's counsel immediately faxed a copy of the filing (dated December 23, 2003) to USAC staff and researched its files and overnight mail records to determine whether the filing had been made. With no evidence of a timely filing available from counsel, USAC staff indicated that the filing would be recorded as late.

Cellular South has been continuously receiving interstate access support in Mississippi. Should there be a gap in support at this time, it will hinder Cellular South's ability to build-out its network in the underserved areas of Mississippi and keep the commitments its has made to the Mississippi Public Utilities Commission to construct new facilities.

## **II. ARGUMENT**

The underlying purpose of the rules would not be served by its strict application in the instant case. The certification rule referenced above is intended to cause licensees to place into the record *prima facie* evidence that they have complied, and will comply with, the FCC=s requirements with respect to the use of interstate access support. Cellular South has in fact complied with the line count filing requirements, albeit several days late. Accordingly, denying interstate access support funding to Cellular South on the basis of an administrative oversight would not serve the purpose of causing Cellular South to come into compliance with commitments made in its certifications.

Line count filings submitted within days of the deadline should be accepted. The information contained in the line count filings enables USAC to anticipate projected support amounts and despite being received late, USAC has had full opportunity to review, compile and publish the data in anticipation of future funding requirements. USAC has not been prejudiced by an inability to use the filings – indeed only the public in rural Mississippi will be prejudiced if support is not provided.

Cellular South has a record of timely and accurate line count filings. The only reason Cellular South missed the applicable deadline is due to an administrative oversight that occurred despite honest intentions and best efforts to make the submission on a timely basis.

In addition, as soon as Cellular South became aware of the missed deadline, it corrected

the matter with USAC and implemented revised procedures to ensure that such errors do not occur in the future. More importantly, Cellular South is an ETC and is offering universal service to subscribers in Mississippi, and is actively providing Lifeline and Linkup support in the state. Given that Cellular South is taking on the responsibilities of an ETC, it would be grossly unfair to deny support simply because it missed a filing deadline. No other party will be prejudiced by a grant of this waiver request and rural Mississippians expecting rapid deployment of facilities will be harmed by its denial.

Furthermore, the FCC has granted similar requests in the past.<sup>3</sup> In the case of Smith Bagley, Inc. (“SBI”) the Commission found that a limited waiver of FCC Rule Section 54.809(c) was warranted since SBI was newly eligible to receive support, SBI immediately remedied its omission upon discovery, and SBI represented that it continued to comply with the commitments made in its late filed certification. These special circumstances are present in the instant case.

Grant of this request would serve the public interest. The universal service program is intended to promote access to advanced services in areas where telephone subscribership has been historically low. Cellular South's universal service program furthers this goal. Cellular South is entitled to interstate access support and such funding will enable Cellular South to construct new facilities to provide quality service to Mississippians. Without interstate access support, Cellular South may be forced to slow the construction of planned system upgrades which will only harm consumers.

### **III. REQUEST FOR EXPEDITED ACTION**

Cellular South requests expedited action on this Petition in order to avoid any interruption in receiving interstate access support so that such support may continue uninterrupted. Cellular South

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<sup>3</sup> *Order In the Matter of Smith Bagley, Inc. Petition for Waiver of Section 54.809(c) of the Commission's Rules and*

has made substantial commitments to construct additional facilities in Mississippi. In the absence of expedited action, Cellular South may be forced to delay system construction and upgrades planned for 2004 based on anticipated interstate access support.

## IV. CONCLUSION

For the reasons set forth above, Cellular South respectfully requests a waiver of Section 54.802(a). Cellular South asks the Commission to accept Cellular South's interstate access line count filing so as to permit interstate access support to continue uninterrupted.

Respectfully submitted,

**CELLULAR SOUTH LICENSES, INC.**

By: /s/  
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